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| 09/973,298 | 10/09/2001 | John W. Polley | 963 P 001 | 5996 |
| 28249 | 7590 | 10/14/2005 | EXAMINER | |
| DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553 | | | SIMONE, CATHERINE A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1772 | |
| DATE MAILED: 10/14/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,298

Applicant(s)

POLLEY, JOHN W.

Examiner

Catherine Simone

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-21,30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-21,30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawn Rejections

1. The 35 U.S.C. 103 rejection of claims 1, 5, 30 and 31 over Kolsky in view of Herman of record in the Office Action mailed 1/26/05, Pages 3-4, Paragraph #7 has been withdrawn due to the Applicant's amendment filed 7/28/05.
2. The 35 U.S.C. 103 rejection of claims 6-8 over Kolsky in view of Herman and in view of Small of record in the Office Action mailed 1/26/05, Page 4, Paragraph #8 has been withdrawn due to the Applicant's amendment filed 7/28/05.
3. The 35 U.S.C. 103 rejection of claims 9-11 over Kolsky in view of Herman and in view of Taylor of record in the Office Action mailed 1/26/05, Pages 4-5, Paragraph #9 has been withdrawn due to the Applicant's amendment filed 7/28/05.
4. The 35 U.S.C. 103 rejection of claim 12 over Kolsky in view of Herman and in view of Small and in view of Tricca et al. of record in the Office Action mailed 1/26/05, Page 6, Paragraph #10 has been withdrawn due to the Applicant's amendment filed 7/28/05.
5. The 35 U.S.C. 103 rejection of claims 2 and 13-16 over Kolsky in view of Herman and in view of Taylor of record in the Office Action mailed 1/26/05, Pages 6-8, Paragraph #11 has been withdrawn due to the Applicant's amendment filed 7/28/05.
6. The 35 U.S.C. 103 rejection of claims 17-21 over Kolsky in view of Herman and in view of Taylor and in view of Small of record in the Office Action mailed 1/26/05, Pages 8-9, Paragraph #12 has been withdrawn due to the Applicant's amendment filed 7/28/05.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 5-8, 12, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herman (US 4,356,642) in view of Tricca et al. (US 4,574,101).

Regarding claims 1, 5, 12, 30 and 31, Herman discloses a mat for decreasing musculoskeletal fatigue in humans during prolonged static postural stress comprising at least two layers of an air bubble shaped closed cellular material having a flat side and a bubble side (Figs. 2 and 3, elements 2), and one layer of foam (Figs. 2 and 3, element 4) wherein the bubble side of one of the layers of air bubble shaped closed cellular material is positioned to face the bubble side of another of the layers of air bubble shaped closed cellular material. However, Herman fails to disclose the foam layer consisting of closed cellular polyethylene foam having a density of at least about 1.7 pounds per cubic foot. Tricca et al. teaches that it is old and well-known in the art to have the foam core layer in a mat consist of closed cellular polyethylene foam having a density of at least about 1.7 pounds per cubic foot (see col. 2, lines 20-25) for the purpose of providing durability and excellent shock absorbing characteristics. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the foam layer in Herman to consist of a closed cellular polyethylene foam having a density of at least about 1.7 pounds per cubic foot as suggested by Tricca et al. in order to provide durability and excellent shock absorbing characteristics.

Regarding claim 2, the air bubble shaped closed cellular material is an anti-static air bubble shaped closed cellular material (Figs. 2 and 3, element 2; also see col. 2, lines 45-50). Regarding

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claim 6, note a base layer including a low tack adhesive bottom surface (Figs. 2 and 3, element 7).

Regarding claim 7, the base layer comprises polyethylene carrier sheet (Figs. 2 and 3, element 2 or 6) having an upper surface and a lower surface and the low tack adhesive (Figs. 2 and 3, element 7) is carried on the lower surface of the carrier sheet. Regarding claim 8, note a removable liner (Figs. 2 and 3, element 6) releasably attached to the lower surface of the low-tack adhesive.

9. Claims 9, 10, 11 and 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herman (US 4,356,642) in view of Tricca et al. (US 4,574,101) and in view of Kolsky (US 5,274,846).

Regarding claims 9, 13 and 14, Herman discloses a mat for decreasing musculoskeletal fatigue in humans during prolonged static postural stress comprising at least two layers of an air bubble shaped closed cellular material having a flat side and a bubble side (Figs. 2 and 3, elements 2), and one layer of foam (Figs. 2 and 3, element 4) wherein the bubble side of one of the layers of air bubble shaped closed cellular material is positioned to face the bubble side of another of the layers of air bubble shaped closed cellular material. However, Herman fails to disclose the foam layer consisting of closed cellular polyethylene foam. Tricca et al. teaches that it is old and well-known in the art to have the foam core layer in a mat consist of closed cellular polyethylene foam (see col. 2, lines 20-25) for the purpose of providing durability and excellent shock absorbing characteristics. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the foam layer in Herman to consist of a closed cellular polyethylene foam as suggested by Tricca et al. in order to provide durability and excellent shock absorbing characteristics. Furthermore, Herman fails to disclose a cover layer of anti-static closed cellular polypropylene foam material. Kolsky teaches that it is old and well-known in the art to have an outer foam layer of an anti-static closed cell polypropylene (see col. 4, lines 30-41) for the

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purpose of providing better support and better energy absorption. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the mat in Herman with a cover layer of an anti-static closed cellular polypropylene foam as suggested by Kolsky in order to provide better support and better energy absorption.

Regarding claims 10, 15 and 16, note in Herman the layers are adhered together and a laminating adhesive is placed between the layers to adhere the layers together (Figs. 2 and 3, element 5). Regarding claim 17, note in Herman a low-tack adhesive layer under the first layer (Figs. 2 and 3, element 7). Regarding claim 18, note in Herman the low tack adhesive layer (Figs. 2 and 3, element 7) comprises an upper polyethylene carrier sheet facing the first layer (Figs. 2 and 3, element 2), a low-tack adhesive carried on the bottom side of the carrier sheet and a removable liner releasably attached to the adhesive (Figs. 2 and 3, element 6). Regarding claim 19, note in Herman a laminated adhesive (Figs. 2 and 3, element 5) interposed between the carrier sheet and the first layer to adhere the adhesive layer to the first layer.

Regarding claim 11, Herman further fails to disclose the bubble layers and the foam layer being dimensioned to provide the mat with a truncated pyramidal shape. Normally, it is to be expected that a change in shape would be an unpatentable modification. Under some circumstances, however, changes such as shape may impart patentability to a product if the particular shape claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. MPEP 2144.04 IV (B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the dimensions of the bubble layers and the foam layer in Herman to provide the mat with a truncated pyramidal shape. One skilled in the art would have been motivated to do so in order to form a mat, since it has been

held that the change in form or shape of the bubble layers and foam layer would be an unpatentable modification in the absence of showing unexpected results.

Regarding claims 20 and 21, Herman also fails to disclose the length and width of the first layer being less than the respective length and width of the low-tack adhesive layer, the length and width of the second layer being less than the respective length and width of the first layer, the length and width of the third layer being less than the respective length and width of the second layer and the length and width of the fourth layer is equal to or greater than the respective length and width of the low-tack adhesive layer in order to provide the mat with a truncated pyramidal shape. Normally, it is to be expected that a change in shape would be an unpatentable modification. Under some circumstances, however, changes such as shape may impart patentability to a product if the particular shape claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. MPEP 2144.04 IV (B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the dimensions of the bubble layers, the foam layers and adhesive layer in Herman to provide the mat with a truncated pyramidal shape. One skilled in the art would have been motivated to do so in order to form a mat, since it has been held that the change in form or shape of the bubble layers, adhesive layer and foam layers would be an unpatentable modification in the absence of showing unexpected results.

Response to Arguments


10. Applicant's arguments with respect to claims 1, 2, 5-21, 30 and 31 have been considered but are moot in view of the new ground(s) of rejection.

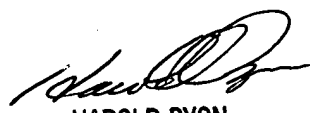
Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Catherine A. Simone
Examiner
Art Unit 1772
October 11, 2005


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 10/11/05